



## DEPARTMENT OF THE INTERIOR

### Bureau of Reclamation

#### 43 CFR Part 423

[Docket No. BOR-2022-0001; RR83570000, 24XR0680A4, RX.19520003.9WOD502]

RIN 1006-AA58

### Public Conduct on Bureau of Reclamation Facilities, Lands, and Waterbodies

**AGENCY:** Bureau of Reclamation, Interior.

**ACTION:** Final rule.

**SUMMARY:** We, the Bureau of Reclamation (Reclamation), are revising regulations that govern public access to and conduct on Reclamation facilities, lands, and waterbodies. The revisions clarify the regulations that maintain law and order and protect persons and property on Reclamation facilities, lands, and waterbodies while bringing the rulemaking into compliance with updated laws and regulations.

**DATES:** This rulemaking is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** This final rule is available on the internet at <https://www.regulations.gov> and <https://www.usbr.gov/fedreg/rules>. Comments we received are available for public inspection at <https://www.regulations.gov> in Docket ID: BOR-2022-0001.

**FOR FURTHER INFORMATION CONTACT:** James Bingham, Security Division, Bureau of Reclamation, at (303) 445-2239, or via email at [jbingham@usbr.gov](mailto:jbingham@usbr.gov).

Individuals who are deaf, deafblind, hard of hearing, or have a speech disability may dial 711 (TTY, TDD, or TeleBraille) to access telecommunications relay services.

### SUPPLEMENTARY INFORMATION:

#### Background

On November 12, 2001, Congress enacted Public Law 107-69, which provides for

law enforcement authority within Reclamation projects and on Reclamation lands.

Section 1(a) of this law requires the Secretary of the Interior to “issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands.” The Secretary of the Interior delegated this authority to the Commissioner of Reclamation.

On December 11, 2008, after a few minor revisions, Reclamation published an update to 43 CFR part 423, Public Conduct on Bureau of Reclamation Facilities, Lands and Waterbodies, as the final rule (73 FR 75347).

Since the publication of the 2008 final rule, technology, especially of unmanned or uncrewed aircraft systems (UAS) commonly referred to as “drones,” has developed rapidly. With this technology came new regulations from the Federal Aviation Administration (FAA), specifically regarding the use of UAS (14 CFR part 107, Small Unmanned Aircraft Systems). Reclamation is revising 43 CFR part 423 to apply consistency with the FAA’s regulations. Reclamation is also modernizing and updating regulations impacting firearms possession, and access and occupancy of Reclamation facilities, lands, and waterbodies. This will allow local, State, and other recreation partners to manage their facilities and sites using their regulations unburdened by conflicting Federal regulations that they have no jurisdiction to enforce. And finally, Reclamation is easing the absolute prohibition regarding reburials of Native American ancestors and will allow an application process to obtain permits for this activity.

### **Summary of and Response to Public Comments**

Reclamation published a proposed rule in the **Federal Register** on February 16, 2023 (88 FR 10070) soliciting public comments for a 60-day period. The public comment period ended on April 17, 2023. During the public comment period, Reclamation received 14 comment submissions from members of the public including State park managers, aviation enthusiasts, wildlife observers, hikers, and Native American Tribes.

Each public comment received consideration in the development of the final rule.

Comments similar in nature have been categorized by subject, and in some instances have been combined with related comments. The following discussion addresses substantive information provided during the comment period, by topic, and includes comments and responses that were made in the final rule based on comment analysis and other considerations.

*Comment:* The Agua Caliente Band of Cahuilla Indians of the Agua Caliente Indian Reservation, California, the Ak-Chin Indian Community, the Confederated Tribes of the Umatilla Indian Reservation, and The Osage Nation provided comments in support of allowing reburial of Native American ancestors, funerary objects, sacred objects, and objects of cultural patrimony as defined by the Native American Graves Protection and Repatriation Act (NAGPRA). Additionally, the Confederated Tribes of the Umatilla Indian Reservation requested addressing animal remains and human burials separately, as well as requesting reburial of ancestral human remains and NAGPRA cultural items that originated on lands other than Reclamation managed lands.

*Response:* Reclamation appreciates Tribal support for implementing a permit process to allow reburial of ancestral human remains and NAGPRA cultural items on Reclamation land and will implement the process as expeditiously and simply as practicable. We agree with the Confederated Tribes of the Umatilla Indian Reservation to address animal remains and human burials separately and have made changes to the final rule accordingly. However, we did not implement the suggestion to allow reburial of Native American ancestors and NAGPRA cultural items from lands managed by agencies other than Reclamation as other agencies may have their own reburial implementation processes and/or authorities.

*Comment:* We received two comments regarding a suggested prohibition on the use of speakers and short-range wireless technology (e.g., Bluetooth®) over a concern

for wildlife and the enjoyment of our lands by the public.

*Response:* We considered this comment and feel the issue of unreasonable noise is already addressed in 43 CFR 423.22(e)(3). This section of the rule prohibits unreasonable noise. In addition, many sites are operated by managing recreation partners such as a State park; their rules for noise would apply. Trying to regulate all speakers and Bluetooth® technology would be burdensome and impractical to enforce.

*Comment:* We received several comments regarding our proposed revision to 43 CFR 423.35, specifically involving the restraining of animals when at a Reclamation facility. One commentor suggested we should focus on education with the public and add prohibitions regarding animals chasing wildlife and that animals must be vaccinated. Two State park management officials commented that they already have rules in their parks regarding animals being restrained, and that their rules are more restrictive.

*Response:* We recognize that our managing partners have different regulations regarding the restraining and control of animals and pets. After consideration of these comments, we are removing this proposed revision. Under 43 CFR part 423, subpart E, authorized officials may establish special use areas which can prohibit certain activities if they pose a risk to the public. If a particular Reclamation facility needs specific prohibitions for a certain activity, such as restraining animals, subpart E can be used for that purpose.

*Comment:* We received one comment asking where Reclamation retains the authority to issue 43 CFR part 423, specifically as it relates to aircraft.

*Response:* Public Law 107-69 states in pertinent part, "The Secretary of the Interior shall issue regulations necessary to maintain law and order and protect persons and property within Reclamation projects and on Reclamation lands." This is the authority from the U.S. Congress to promulgate this rule. Since 2006, Reclamation's public conduct rules have addressed aircraft to include reckless operations and seaplane

activities. Reclamation regularly collaborates with the FAA on a variety of matters, including enforcement. Reclamation collaborated with the FAA on the development of their flight restrictions at Reclamation's five largest dams. The risk from inadvertent accidents or maligned attacks on our infrastructure is real. Having aircraft or UAS flying at ground level through a recreation area or across the top of a dam crowded with tourists poses a risk to the visiting public. Using FAA's regulations as a guide, we incorporated their definitions and language into this rule.

*Comment:* We received one comment recommending the prohibition of all motorized use on lands and waters. The comment referenced people in Europe and Ukraine not having enough fuel while Americans are using fossil fuels for recreation.

*Response:* In hundreds of circumstances across the west, public highways and even railroads cross Reclamation lands and facilities. Reclamation would be unable to prohibit the use of fossil fuels on our own. Reclamation has hundreds of sites managed by other entities, such as State parks, through contracts or agreements, and other sites managed directly by Reclamation. States, not Reclamation, regulate boating and motor vehicle use. Reclamation and our managing partners such as municipal water districts, Tribal water authorities, and State parks, operate thousands of motor vehicles and boats in the performance of our missions. Our facilities use combustion engines for generators, cranes, tractors, and water delivery systems to accomplish our mission. And finally, many of our facilities, lands, waterbodies, and projects are spread across multiple states. Regulating commerce between the States is the purview of the Congress.

*Comment:* We received one comment asking for permission to use metal detectors for the casual collection of items such as fishing lures, weights, and coins.

*Response:* Reclamation already allows for use and possession of metal detectors under 43 CFR 423.29(f) with the issuance of a permit.

*Comment:* We received one comment asking if we were giving the “all-clear for

unrestricted recreational activity on land use.” In addition, the commentor stated this rule did not explicitly set aside lands to be undisturbed by recreation activity. There was also the perception we were removing restrictions or standoff distances from dams and other infrastructure.

*Response:* Section 423.10 states in pertinent part that all Reclamation facilities, lands, and waterbodies are open to lawful use by the public unless they are closed to public use under subpart B of part 423, or as provided by 43 CFR part 420. Section 420.2 prohibits off-road vehicle use unless the area is specifically designated for that purpose. Reclamation has 11 National Wildlife Refuges and numerous other State wildlife management areas overlayed across our lands, projects, and reservoirs. This rule change will not change the status of these locations. There may be areas that will be periodically closed to all use due to an identified threat to the environment or wildlife using our existing authorities.

This rule change does not remove the restrictions for access to critical infrastructure. We are revising this rule to allow local managers to designate standoff distances using signs, fencing, buoys, and other means where not already addressed in this rule.

*Comment:* We received a comment from one respondent regarding firearms safety, specifically that firearms be unloaded unless they are in use for hunting and/or self-defense purposes. In addition, the respondent recommended signage be posted in parks and at trailheads advising the public where firearms are allowed, dates for hunting seasons, and suicide prevention hotline numbers.

*Response:* Reclamation has 247 managing recreation partner sites across the 17 western States. Those partner agencies with management responsibility for the area administer recreation at those sites. This includes signs at trailheads, parking lots, and other public areas. State wildlife authorities manage hunting on Reclamation land. Our

rule currently requires the public to comply with Federal, State, and local laws regarding firearms possession and transportation. Since Reclamation does not have its own law enforcement capability, we depend on our managing partners and local law enforcement to maintain the peace and public order at our facilities and the lands and waters they manage. The suicide prevention signage recommendation has merit and is being referred to our lands and recreation programs.

*Comment:* We received one comment from a State park management official expressing concern that the proposed revision in 43 CFR 423.30 regarding enforcement of this rule would be the responsibility of park managers.

*Response:* We are adopting the definition of firearm found in 18 U.S.C. 921(a)(3). We recognize our definition may differ from that of our numerous managing partners. We also recognize that State and local laws and ordinances regarding firearm use and possession may differ from what is found between the States and even at individual sites. Since Reclamation does not have its own law enforcement capability, we depend on local and State law enforcement entities to maintain the peace and public order in their communities. Therefore, we are proposing to let those authorities such as State park managers and sheriffs enforce their laws and ordinances on lands, facilities, and waterbodies where they have assumed administration without the circumstance of them being in conflict with this rule. Taking this park management official's concerns into consideration, we are clarifying the language to more clearly explain that the public must follow the laws and ordinances of the managing recreation partner.

*Comment:* There was a concern that park managers may not have the flexibility to issue use authorizations or permits for certain aviation related activities such as a hot air balloon rally.

*Response:* How Reclamation interacts with our managing partners is different than how we interact with the general public. Interactions with our managing partners

through contracts and cooperative agreements are guided by the contract between Reclamation and the partner, 43 CFR part 429, and other applicable laws. Under 43 CFR 429.4, managing partners can issue limited use authorizations for certain activities, including aviation activities.

*Comment:* We received one comment from a State park management official asking us to consider adding “rent” as a prohibited activity in 43 CFR 423.27.

*Response:* We agree with this comment and will add “rent” as a prohibited activity in 43 CFR 423.27.

*Comment:* We received one comment from a State park management official expressing concern over the language in 43 CFR 423.37, “Winter activities,” regarding vehicle use near our infrastructure, specifically the prohibition for driving a vehicle within 100 yards of a facility.

*Response:* We recognize that our southern and western waterbodies are in areas that do not freeze and we did not explain our intent for managing standoff distances on iced-over waterbodies very well. We took this comment into consideration and will change the heading of this section from “Winter activities” to “Activities on iced waterbodies.”

*Comment:* We received one comment from a State park management official expressing concern that our proposed definition of off-road vehicles would cause confusion for the public and managing partners and suggested removing the definition.

*Response:* We considered this comment but will leave the definition in the rule to be consistent with what exists in 43 CFR part 420.

*Comment:* We received comments from two State park management officials in support of the proposed revisions in 43 CFR 423.33 and 423.21(f) regarding camping and stay limits, and requirements for the visiting public to pay applicable fees for recreation activities.



*Response:* We appreciate these comments and value the relationship that exists with our Federal, State, and local recreation and wildlife management partners across our 17 western states.

### **Summary of Changes from the Proposed Rule**

After taking the public comments into consideration and after additional review, Reclamation implemented some requested changes, such as refining the NAGPRA reburial language and separating the animal burials and human burials into different sections of this final rule. Additionally, we removed the requirement for restraining animals, changed the heading of 43 CFR 423.37 to better address activities on iced-over or frozen waterbodies, revised the definition of *aircraft* for simplicity and consistency with the FAA, revised the definition of firearms to be consistent with what is codified in Federal law, and added a requirement that visitors must pay required fees in our recreation areas.

***Section 423.2 Definitions of terms used in this part.*** During the drafting of the proposed rule, it was discovered that the definition of model aircraft had been removed from the FAA definitions. We are removing the definition of *model aircraft* and incorporating “model aircraft” into the overall definition of aircraft.

***Section 423.27 Advertising and public solicitation.*** We are adding the word “rent” next to “sell” as a prohibited activity.

***Section 423.28 Memorials and Native American Graves Protection and Repatriation Act (NAGPRA) reburials.*** After reviewing comments regarding the burial of animal and human remains, we are separating animals and humans into subparts and revising the heading of this section.

***Section 423.30 Weapons, firearms, explosives, and fireworks.*** We are adding language similar to what already exists in 43 CFR 423.3(d) regarding firearms which states: “...However, Reclamation retains the authority to take necessary actions to

safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.”

***Section 423.33 Camping.*** Like § 423.30, we are adding language similar to what already exists in 43 CFR 423.3(d) which states: “...However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.”

***Section 423.35 Animals.*** As a result of public comments, we are removing the reference to a leash or restraint requirement for animals. This does not preclude an authorized officer from establishing a special use area as identified in 43 CFR part 423, subpart E, for certain activities, such as managing animals in highly populated tourist areas. In addition, we are adding § 423.35(e) to include information on animal remains.

***Section 423.37 Winter activities.*** Through comments and internal discussion, we felt the heading “Winter activities” is not appropriate for the circumstances we are trying to address, which occur on ice. Therefore, we are changing the heading of this section to “Activities on iced waterbodies.”

## **Compliance with Other Laws, Executive Orders, and Department Policy**

### ***Regulatory Planning and Review (Executive Orders 12866 and 13563)***

Executive Order 12866, as amended by Executive Order 14094, provides that the Office of Information and Regulatory Affairs in the Office of Management and Budget will review all significant rules. The Office of Information and Regulatory Affairs has determined that this rule is not significant.

Executive Order 13563 reaffirms the principles of Executive Order 12866 while calling for improvements in the Nation's regulatory system to promote predictability, to reduce uncertainty, and to use the best, most innovative, and least burdensome tools for achieving regulatory ends. Executive Order 13563 also directs agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice

for the public where these approaches are relevant, feasible, and consistent with regulatory objectives. Executive Order 13563 emphasizes further that regulations must be based on the best available science and that the rulemaking process must allow for public participation and an open exchange of ideas. We have developed this rule in a manner consistent with these requirements.

### ***Regulatory Flexibility Act***

This rule will not have a significant regulatory effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*).

### ***Congressional Review Act***

When is a rule major? The Congressional Review Act (CRA) defines a rule as major if it meets any of three criteria. The three criteria are:

- (a) Does the rule have an annual effect on the economy of \$100 million or more?
- (b) Will the rule cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions?
- (c) Does the rule have significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises?

This rule is not a major rule under the CRA.

### ***Unfunded Mandates Reform Act***

This rule does not impose an unfunded mandate on State, local, or Tribal governments or the private sector of more than \$100 million per year. This rule does not have a significant or unique effect on State, local, or Tribal governments or the private sector. A statement containing information required by the Unfunded Mandates Reform Act (2 U.S.C. 1531 *et seq.*) is not required.

### ***Takings (Executive Order 12630)***

This rule does not affect a taking of private property or otherwise have taking implications under Executive Order 12630. This rule is not a Government action capable of interfering with constitutionally protected property rights. A takings implication assessment is not required.

***Federalism (Executive Order 13132)***

Under the criteria in Section 1 of Executive Order 13132, this rule does not have sufficient federalism implications to warrant the preparation of a federalism summary impact statement. It does not have a substantial direct effect on the States, on the relationship between the Federal Government and the States, or on the distribution of power and responsibilities among the levels of government. A federalism summary impact statement is not required.

***Civil Justice Reform (Executive Order 12988)***

This rule complies with the requirements of Executive Order 12988. Specifically, this rule:

(a) meets the criteria of section 3(a) requiring that all regulations be reviewed to eliminate errors and ambiguity and be written to minimize litigation, and

(b) meets the criteria of section 3(b)(2) requiring that all regulations be written in clear language and contain clear legal standards.

***Consultation with Indian Tribes (Executive Order 13175)***

The Department of the Interior strives to strengthen its government-to-government relationship with Indian Tribes through a commitment to consultation with Indian Tribes and recognition of their right to self-governance and Tribal sovereignty. We have evaluated this rule under the Department of the Interior's consultation policy and under the criteria in Executive Order 13175 and although there are no substantial direct effects on federally recognized Indian Tribes, Reclamation notified the 287 Tribes with interests in the 17 western States in which Reclamation has a presence of the intent

to revise the rule, offering opportunity for Tribal consultation during three online consultation webinars, as well as upon request. Reclamation has fully considered Tribal views in this final rule, implementing recommendations offered by the Confederated Tribes of the Umatilla Indian Reservation. With the unique relationship between the Federal Government and Indian Tribal governments, Reclamation aims to ensure Tribal governments are engaged, particularly, in the discussion about permitting for reburial of their ancestors and NAGPRA cultural items on Reclamation managed lands.

#### ***Paperwork Reduction Act of 1995***

This rule does not contain information collection requirements and does not require a submission to the Office of Management and Budget under the Paperwork Reduction Act.

#### ***National Environmental Policy Act***

This rule is categorically excluded from National Environmental Policy Act of 1969 (NEPA) analysis under Department of the Interior categorical exclusion 43 CFR 46.210(i), which covers “Policies, directives, regulations, and guidelines: that are of an administrative, financial, legal, technical, or procedural nature; or whose environmental effects are too broad, speculative, or conjectural to lend themselves to meaningful analysis and will later be subject to the NEPA process, either collectively, or case-by-case.” This rule does not change the existing allowances regarding public access to and conduct on Reclamation facilities, lands, and waterbodies except in instances where additional permits may be needed that could be subject to NEPA. Pursuant to 43 CFR 46.205(c), Reclamation has reviewed its reliance upon this categorical exclusion against the list of extraordinary circumstances at 43 CFR 46.215 and has found that none are applicable for this rule. Therefore, neither an environmental assessment nor an environmental impact statement is required for this rulemaking.

#### ***Effects on the Energy Supply (Executive Order 13211)***

This rule is not a significant energy action under the definition in Executive Order 13211 and does not require a Statement of Energy Effects.

### **List of Subjects in 43 CFR Part 423**

Law enforcement, Public conduct, Reclamation lands, Reclamation projects.

### **Promulgation of Final Rule**

For the reasons stated in the preamble, Reclamation is amending part 423 of title 43 of the CFR as follows:

### **PART 423—PUBLIC CONDUCT ON BUREAU OF RECLAMATION FACILITIES, LANDS AND WATERBODIES**

1. Revise the authority citation for part 423 to read as follows:

**AUTHORITY:** 43 U.S.C. 373a and 373b.

2. Amend § 423.2 by:

a. Revising the definitions of “Aircraft” and “Firearm”; and

b. In the definition of “Off-road vehicle”:

i. Removing the word “and” at the end of paragraph (6);

ii. Removing the period at the end of paragraph (7) and adding “; and” in its place; and

iii. Adding paragraph (8).

The revisions and addition read as follows:

#### **§ 423.2 Definitions of terms used in this part.**

*Aircraft* means a device that is:

(1) Used or intended to be used for flight in the air;

(2) Capable of carrying a pilot, a payload, and/or passengers;

(3) Controlled either by onboard crew or remotely; and/or

(4) Identified by the Federal Aviation Administration as: general aviation aircraft, bush planes, seaplanes, float planes, ski planes, gliders, and helicopters, including those that are float/ski-equipped, variations of model aircraft, and unmanned or uncrewed aircraft systems.

\* \* \* \* \*

*Firearm* means:

- (1) Any weapon (including a starter gun) which will, is designed to, or may readily be converted to expel a projectile by the action of an explosive;
- (2) The frame or receiver of any such weapon; and
- (3) Any firearm muffler or firearm silencer.

\* \* \* \* \*

*Off-road vehicle* \* \* \*

- (8) *Electric bikes* as defined and codified at 43 CFR part 420.

\* \* \* \* \*

3. Amend § 423.21 by adding paragraph (f) to read as follows:

**§ 423.21 Responsibilities.**

\* \* \* \* \*

(f) You must pay applicable fees established by Federal, State, or local government recreation management entities, or contracted vendors for activities on Reclamation facilities, lands, and waterbodies such as, but not limited to, camping, boating, parking, day-use, or visitor tours.

4. Revise § 423.27 to read as follows:

**§ 423.27 Advertising and public solicitation.**

(a) You must not engage in advertising or solicitation on Reclamation facilities, lands, or waterbodies except as allowed under valid contract with Reclamation, or as allowed by a permit issued pursuant to subpart D of this part.

(b) It is prohibited to sell or rent private goods, including personal property, or represent others in the selling or renting of personal property, on Reclamation property unless specifically authorized under permit issued pursuant to subpart D of this part.

5. Revise § 423.28 to read as follows:

## **§ 423.28 Memorials and reburials.**

(a) *Memorials*. You must not bury, deposit, or scatter human remains (except as noted in paragraph (b) of this section), or place memorials, markers, vases, or plaques on or in Reclamation facilities, lands, or waterbodies. See § 423.35 for information on animal remains.

(b) *Native American Graves Protection and Repatriation Act (NAGPRA)* *reburials*. You must not rebury human remains on or in Reclamation facilities, lands, or waterbodies unless permitted under subpart D of this part. An Indian Tribe official or the lineal descendants of federally recognized Tribes may apply for a permit issued pursuant to subpart D of this part to rebury NAGPRA (25 U.S.C. 3001-3013) human remains or cultural items (funerary objects, sacred objects, or objects of cultural patrimony) on or in Reclamation facilities, lands, or waterbodies.

6. Amend § 423.30 by adding paragraph (d) to read as follows:

## **§ 423.30 Weapons, firearms, explosives, and fireworks.**

\* \* \* \* \*

(d) In recreation facilities or areas operated through contracts or other agreements by a managing recreation partner agency from another Federal, State, local, or Tribal governmental entity, such as a State park, the laws, ordinances, and regulations of those partner agencies pertaining to possession and use of firearms shall be enforced by those partner agencies. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.

7. Amend § 423.33 by:

- a. Revising paragraph (b);
- b. Removing the semicolon at the end of paragraph (c) and adding a period in its place;
- c. Removing “; and” at the end of paragraph (d) and adding a period in its place; and



d. Adding paragraph (f) to read as follows:

**§ 423.33 Camping.**

\* \* \* \* \*

(b) Camping stay limits are as follows:

(1) You must not camp on Reclamation lands at any single Reclamation recreation facility such as a campground for more than 14 days during any period of 30 consecutive days, except as allowed by permit issued under subpart D of this part.

(2) You must not camp in a single location on Reclamation lands, including undeveloped project lands or open range for more than 14 days during any period of 30 consecutive days, and must move at least 10 miles after each 14-day period is reached, except as allowed by permit issued under subpart D of this part.

\* \* \* \* \*

(f) Where recreation facilities or other areas of Reclamation lands and waterbodies are operated through a contract or other agreement by a managing recreation partner of another Federal, State, local, or Tribal governmental entity, such as a State park, the laws, ordinances, and regulations of those partner agencies pertaining to camping shall be enforced by those partner agencies. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.

8. Amend § 423.35 by adding paragraphs (e) and (f) to read as follows:

**§ 423.35 Animals.**

\* \* \* \* \*

(e) You must not bury, deposit, or scatter animal remains, or place memorials, markers, vases, or plaques on or in Reclamation facilities, lands, or waterbodies. This section does not apply to the burial of parts of fish or wildlife taken in legal hunting, fishing, or trapping.

(f) Where recreation facilities or other areas of Reclamation lands and waterbodies are operated through a contract or other agreement by a managing recreation partner of another Federal, State, local, or Tribal governmental entity, such as a State park, the laws, ordinances, and regulations of those partner agencies pertaining to animals and pets shall be enforced by those partner agencies. However, Reclamation retains the authority to take necessary actions to safeguard the security and safety of the public and such Reclamation facilities, lands, and waterbodies.

9. Amend § 423.36 by revising paragraph (a) to read as follows:

**§ 423.36 Swimming.**

(a) You may swim, wade, snorkel, scuba dive, raft, or tube at your own risk in Reclamation waters, except:

(1) You may not swim past signs, fences, buoys, or barriers marking public access limits to, or within, 100 yards of Reclamation structures including, but not limited to, dams, powerplants, pumping plants, spillways, water conveyance gates, intake structures, stilling basins, and outlet works;

(2) In canals, laterals, siphons, tunnels, and drainage works;

(3) At public docks, launching sites, and designated mooring areas; or

(4) As otherwise delineated by signs or other markers.

\* \* \* \* \*

10. Amend § 423.37 by revising the section heading and paragraph (b) to read as follows:

**§ 423.37 Activities on iced waterbodies.**

\* \* \* \* \*

(b) On iced-over Reclamation waterbodies, you must not ice skate, ice fish, ice sail, walk, ride, drive a vehicle, or otherwise move past buoys or barriers marking public access limits to, or come within 100 yards of, Reclamation structures including, but not limited to, dams, powerplants, pumping plants, spillways, water conveyance gates, intake

structures, stilling basins, and outlet works.

\* \* \* \* \*

11. Amend § 423.41 by:

- a. Revising paragraphs (b), (c), (e), (f) introductory text, and (f)(2); and
- b. Removing paragraph (g).

The revisions read as follows:

**§ 423.41 Aircraft.**

\* \* \* \* \*

(b) Aircraft flight altitudes are as follows:

(1) You must not operate any aircraft within 400 feet near or over dams, powerplants, electrical switchyards, pumping plants, spillways, stilling basins, gates, intake structures, outlet works, warehouses, offices, maintenance facilities, campgrounds, gate houses, control houses, or other occupied recreation or operations facilities without prior approval by an authorized official.

(2) You must not operate any aircraft on or above Reclamation facilities, lands, and waterbodies in a careless, negligent, or reckless manner so as to endanger or harass persons or wildlife or pose a risk to infrastructure or natural or cultural resources.

(c) Temporary flight restrictions are as follows:

(1) You must not operate an aircraft on or above Reclamation facilities, lands, and waterbodies in violation of a temporary flight restriction established by the Federal Aviation Administration (FAA) without prior approval by an authorized officer.

(2) This section does not provide authority to deviate from Federal or State regulations, or prescribed standards, including, but not limited to, regulations and standards concerning pilot certifications or ratings and airspace requirements.

\* \* \* \* \*

(e) You must comply with all applicable FAA and U.S. Coast Guard regulations

(14 CFR parts 1, 61, and 91 and 33 CFR part 104, respectively) when operating a float/ski-equipped aircraft, including seaplanes, on Reclamation waterbodies.

(f) You must securely moor any float/ski-equipped aircraft, including seaplanes, remaining on Reclamation waterbodies in excess of 24 hours at mooring facilities and locations designated by an authorized official. Float/ski-equipped aircraft, including seaplanes, may be moored for periods of less than 24 hours on Reclamation waterbodies, except in special use areas otherwise designated by an authorized official, provided:

\* \* \* \* \*

(2) The operator remains in the vicinity of the float/ski-equipped aircraft, including seaplanes, and is reasonably available to relocate the aircraft if necessary.

12. Amend § 423.50 by revising paragraph (a) to read as follows:

**§ 423.50 How can I obtain permission for prohibited or restricted uses and activities?**

(a) Authorized officials may issue permits to authorize activities on Reclamation facilities, lands, and waterbodies otherwise prohibited or restricted by §§ 423.16(a)(3), 423.26, 423.27, 423.28(b), 423.29(f), 423.30(c), 423.33(d), 423.35(d)(1), and 423.41, and may terminate or revoke such permits for non-use; noncompliance with the terms of the permit; violation of any applicable law; or to protect the health, safety, or security of persons, Reclamation assets, or natural or cultural resources.

\* \* \* \* \*

13. Amend § 423.60 by revising paragraph (a)(1) to read as follows:

**§ 423.60 How special use areas are designated.**

(a) \* \* \*

(1) Establish special use areas within Reclamation facilities, lands, or waterbodies for application of reasonable schedules of visiting hours; public use limits; and other conditions, restrictions, allowances, or prohibitions on particular uses or activities that

vary from the provisions of subpart C of this part, except § 423.28(a); and

\* \* \* \* \*

14. Revise § 423.63 to read as follows:

**§ 423.63 Existing special use areas.**

Areas where rules were in effect on April 17, 2006, that differ from the rules set forth in subpart C of this part are considered existing special use areas, and such differing rules remain in effect to the extent allowed by subpart A of this part, and to the extent they are consistent with § 423.28(a). For those existing special use areas, compliance with §§ 423.60 through 423.62 is not required until the rules applicable in those special use areas are modified or terminated.

**Michael Brain,**

*Principal Deputy Assistant Secretary for  
Water and Science.*

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